

Montana Transportation Commission

February 24, 2005 meeting

Montana Department of Transportation building
2701 Prospect Avenue, Helena MT

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Note: => indicates follow-up is needed.

In attendance:

Bill Kennedy, Transportation Commission Chair
Nancy Espy, Transportation Commission Vice Chair
Rick Griffith, Transportation Commissioner
Kevin Howlett, Transportation Commissioner
Deb Kottel, Transportation Commissioner
Jim Lynch, Director – Montana Department of Transportation (MDT)
Jim Currie, MDT Deputy Director
Tim Reardon, MDT Chief Counsel
Sandra Straehl, MDT Rail, Transit & Planning Administrator
Loran Frazier, MDT Chief Engineer (acting)
Janice Brown, Montana Division Administrator – Federal Highways Administration (FHWA)
Mike Duman, Assistant FHWA Division Administrator

Chairman Kennedy called the meeting to order at 1:05 pm.

Agenda item 1: Access control on Canyon Ferry Rd

STPS 430-1(5)1 ~ Lewis & Clark County

As part of the project to reconstruct Canyon Ferry Road from milepost 1.1 to 9.2 (the junction with Secondary 284/Spokane Creek Road, staff proposes to limit the number of access points. There are a lot of intersection-related accidents that could be thus reduced.

Lewis & Clark Commissioner Ed Tinsley stood in support of the proposal.

Commissioner Kottel moved to accept staff recommendations to approve the access control resolution for project STPS 430-1(5)1 on Canyon Ferry Road in Lewis & Clark County; Commissioners Espy and Griffith seconded the motion. All five commissioners voted aye.

Agenda item 2: Speed limit studies

Frazier summarized the recommendations for the following special speed zones:

Secondary 416 – Blue Creek Road (Yellowstone County)

- A 60 mph speed limit beginning at station 424+00, project S 132(6) (the end of the 50 mph speed zone approved in 1998) and continuing south to station 326+00, project RS 416-1(3), an approximate distance of 2.045 miles.
- The 50 mph / 40 mph special school speed zone for the Blue Creek School will remain in effect as approved in 1996.
- A 60 mph speed limit beginning at station 302+00, project RS 416-1(3) and continue south to station 284+00, an approximate distance of 1,800 feet.
- The addition of a 45 mph advisory speed plate for a curve located with the 50 mph speed zone, at the request of Yellowstone County.

MT 200 – Thompson Falls (Sanders County)

- A new 55 mph speed limit beginning at station 567+00, project F 6-1(40) (1100 feet west of milepost 49) and continue east 587+00, an approximate distance of 2,000 feet.
- A 45 mph speed limit beginning at station 587+00, project F 6-1(40) (350 feet west of bridge end) and continuing east to station 0+00, an approximate distance of 6,050 feet.
- A 35 mph speed limit beginning at station 0+00, project F 6-1(23) (300 feet west of Pond Street) and continue east to station 12+00, an approximate distance of 1,200 feet.
- The statutory 25 mph speed limit beginning at station 12+00, project F 6-1(23) (150 feet east of Lincoln Street) and continuing to station 49+00, an approximate distance of 3,700 feet.
- A 35 mph speed limit beginning at station 49+00, project F 6-1(23) (east side of the intersection with Orchard Street) and continuing east to station 1124+00, an approximate distance of 950 feet.
- A 45 mph speed limit beginning at station 1124+00, project STPP 6-1(48) (950 feet east of Orchard Street) and continuing east to station 1049+00, an approximate distance of 7,600 feet.
- A new 55 mph speed limit beginning at station 1049+00, project STPP 6-1(48) (650 feet east of Woodline Lane) and continuing east to station 1026+00, an approximate distance of 2,300 feet.

MT 16 – Sidney Northwest (Richland County)

- Our findings support Richland County's request to reinstate the statutory 70 mph speed limit, as the 45 mph speed limit is not reflective of traffic operation or the roadway's design features. Richland County officials have submitted written comments that they are in favor of reinstating the statutory 70 mph speed.
- We recommend removal of the 45 mph speed limit, Speed Zone #388 – Montana 16 & Secondary 201 as approved by the State Highway Commission in November 1974.

US 12 – Helena West (Lewis & Clark County)

- A 55 mph speed limit beginning at station 1146+00, project RTF 8-2(14) (the end of the existing 45 mph speed zone) and continuing west to station 1043+00, project FAP U249 – C (200 feet west of the intersection with Old Broadwater Lane), an approximate distance of 1.95 miles.

Chairman Kennedy said Yellowstone County had some concerns about the recommendations for the Blue Creek Road; in particular, the junction with Briarwood Boulevard will need attention in the future as traffic continues to increase.

Commissioner Griffith moved to accept staff recommendations to approve the special speed zones as presented; Commissioner Howlett seconded the motion. All five commissioners voted aye.

Agenda item 3: Specification revision – allow option of submitting bid proposals electronically through the Internet

Contract Plans Bureau Chief Suzy Althof explained that Bid Express, a component of AASHTO software, will allow contractors to submit bids from their desktops instead of having to travel to Helena to submit bids. It will expand contractors' options; it will not mandate any change. We hope it will increase competition and make the bidding process easier. This method also allows contractors to make changes until the last minute, and to stay onsite on projects during construction season. Bids are encrypted and not read until the designated time. There is a small fee associated with using the service.

Construction Engineer Mark Wissinger explained that each contractor must register himself in order to submit bids using the assigned ID. We went through the rule-making process to make this possible; we are the first state agency to use the electronic signature.

Commissioner Kottel asked what would happen if there would be failure of receipt problems, such as the bid being blocked due to a virus. How is the contractor guaranteed that his submittal has been received? Staff responded that the program has a 99-plus percent success rate and states that are using it have favorable reports. Commissioner Espy noted that specification 102.10 B(6) states that a contractor may “make no claim against the department in the event it is unable to submit its bid to Bid Express™ and/or Bid Express™ is unable to submit the bid(s) to the department. The department reserves the right to postpone or cancel the public opening and reading of bids in the event of internet, Bid Express™ or MDT technical difficulties.”

Cary Hegreberg expressed support for the proposal on behalf of the Montana Contractors’ Association. He congratulated the department for their work in making this possible. Some of the contractors are currently participating in a pilot project.

Commissioner Kottel asked what would happen if a contractor submitted a hard copy bid proposal as well as an electronic submission, particularly if the two are not the same? Althof pointed to Section 102.10 B(5) of the proposed specification, which states that “If a bidder chooses to submit Proposal using Bid Express™ and also submits a hard copy bid, the electronic copy of the bid will control.”

Commissioner Howlett moved to accept the staff recommendation to approve the revision of the supplemental specification to allow electronic Internet bidding as an additional tool by which contractors may submit proposals for construction projects; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 4: Interstate maintenance projects in the Missoula District

These four projects would provide for the rehabilitation of 34 structures on Interstate 90 in the Missoula district.

Commissioner Howlett moved to accept staff recommendations to approve \$1,093,000 to add these four projects to the statewide transportation improvement program (noting that only \$80,000 will be expended initially in partial preliminary engineering expenditures); Commissioner Griffith seconded the motion. All five commissioners voted aye.

Agenda item 5: Pavement preservation project nominations for 2006

This is a supplemental request to the pavement preservation projects that were named and approved at the commission’s August 2004 meeting in Baker.

Raynesford-South is moving forward under the maintenance program and needs to be removed from the request.

Commissioner Griffith moved to accept staff recommendations to approve the addition of the *Park City-Laurel* project and the *St. Xavier-N & S* project to the state-funded construction program to be paid out during the 2005-6 biennium; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 6: Railroad crossing – surface improvement projects

Railroad crossing on MT 13 approx. four miles east of Wolf Point (Macon)
Railroad crossing on Rouse Ave in Bozeman

Where pavement on the state system crosses a railroad track, MDT partners with the railroad to improve the crossing: MDT contributes the materials and the railroad contributes the labor for construction.

Commissioner Espy moved to accept staff recommendations to approve spending \$135,200 for materials to improve railroad crossings at Macon (on MT 13 approximately four miles east of Wolf Point) and Rouse Avenue in Bozeman; Commissioner Howlett seconded the motion. All five commissioners voted aye.

Agenda item 7: Increase in project scope and cost

STPHS 61-3(18)86, 2000 – Guardrail – 3 km S. of Fergus Co. Ln. – S
STPP 27-2(13)23, Baker – South

Straehl referred to commission policy 12, *Reapproving a project based on increase in scope and cost*. This identifies triggers for bringing a project back to the commission for review and re-approval. Staff in the Rail, Transit and Planning Division tracks these increases. This is important for complying with the fiscal constraint in programs and projects that the Federal Highway Administration is looking at.

These two projects have experienced increased project costs for the reasons outlined in the agenda materials.

Commissioner Espy moved to accept staff recommendations to approve the increase in project scope and cost for project STPHS 61-3(18)86 2000–*Guardrail–3 km S of Fergus County Line–S* and project STPP 27-2(13)23 *Baker–South*; Commissioner Kottel seconded the motion. All five commissioners voted aye.

Agenda item 8: Great Falls south arterial

Straehl explained that this project has some history. There have been efforts over the past 20 plus years to develop a corridor between Great Falls and Billings. This includes bypasses around Billings and Great Falls. The initial step in the process was to perform feasibility studies. These check for any insurmountable problems in moving the projects forwards.

It was noted that these projects will not affect the air quality in either city, whether or not they are constructed.

Great Falls City County Planning Director Ben Rangel stood in support of the project. To his knowledge, it has been in the works for 35 years! He requested clarification on the statement, “There is no commitment in the agreement to use core highway-program funds to develop this corridor.” Straehl explained that the agreement does not preclude this, but the agreement does not commit the department to use of core program funds, as our preference is to secure earmarked funding from Congress. Rangel confirmed that Cascade County is in support of the project.

Straehl said if this becomes a reality, the highway would become part of the Camino-Real designated trade corridor, which would necessitate a change in NHS designations in Great Falls. Chairman Kennedy clarified that this means Great Falls, like Billings, would be trading funding categories when the bypasses are constructed.

Commissioner Kottel moved to accept staff recommendations to approve pursuit of federal discretionary funding for continued department-led project development of the South Arterial project in Great Falls including a location study, preparation of an environmental document, project design and eventual construction; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Agenda item 10: Letting lists

Frazier distributed copies of the most recent letting lists for March, April, May, June and July 2005.

Currie said because of decreased federal funding under continuing resolutions following the expiration of TEA-21, we have reduced the upcoming six lettings by \$25 million. Drafting errors in the appropriations act and Congress's decision not to authorize the last week of September (the final week of the federal fiscal year) cost us about \$30 million in obligation authority. At the end of last federal fiscal year, we were carrying about \$30 million in advance construction, which means we are borrowing from the future – we have let these projects, but we don't have obligation authority for them, which means we cannot file for federal reimbursement on expenditures. Until we have a new federal transportation bill, we need to err on the side of caution. Under the continuing resolution, we continue to lose program share, which means our federal income is dropping.

We have taken a moderate approach, rather than completely pay off the advance construction, which would necessitate a \$45-50 million reduction. Currie said he also requested that the lettings be flattened a bit, to even project lettings out.

If reauthorization comes in higher than expected, we have the flexibility to move projects that have been pushed out back into this federal fiscal year.

Commissioner Griffith moved to accept staff recommendations to approve the letting lists as presented; Commissioner Kottel seconded the motion. All five commissioners voted aye.

Agenda item 11: Certificates of completion

These lists show projects that have been completed as of November and December 2004.

Currie invited the commission to review the date of completion in comparison with the dated accepted by the director. We attempt to make that happen within six months because of the impact to the contractor and his/her bonding status.

=> Chairman Kennedy requested an educational session on reading and interpreting the certificates of completion at the next commission meeting.

Commissioner Espy moved to accept staff recommendations to approve the certificates of completion as presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Agenda item 12: Liquidated damages

\$58,176 assessed on project STPP 56-1(3)0 *Bull Lake – S* (JTL Group, Inc – Kalispell)

\$673 assessed on project STPHS-IM 0002(627) *1998 – D3 – Electrical* (United Rentals, Inc – Missoula)

The commission took no action therefore the liquidated damages stand.

Agenda item 13: Change orders

Frazier reviewed the change orders as detailed in the agenda materials.

Commissioner Espy moved to accept staff recommendations to approve the change orders as presented; Commissioner Kottel seconded the motion. All five commissioners voted aye.

=> Commissioner Kottel requested information on what is considered appropriate for change orders in advance of the next meeting.

Agenda item 9: Lincoln Road/I-15 interchange safety improvement project

IM 15-4(91)200 [CN 4815] – design-build pilot project #2

The 2003 Legislature authorized a six-year, \$20 million pilot program for a design-build contracting pilot program. The design-build advisory committee formulated guidelines and selected three different types of projects for the pilot program: a facility (Wibaux weigh station, awarded August 2004), a bridge (safety improvements to the Lincoln road interchange on Interstate 15 north of Helena), and a reconstruction project (the Dupuyer-SE project).

MDT Design Build Engineer Mac McArthur emphasized the goals for the design-build pilot program are 1) to keep it fair and equitable, 2) to provide the best value for MDT, and 3) improve on the process as we go through it, in the spirit of a pilot program. We have already made several changes in response to input and suggestions received from the first project: one change allows the technical proposal and the bid price proposals to be submitted separately with a two-week period between submissions.

Dick Anderson of Dick Anderson Construction, Inc. said he was not there to ask the commission to reconsider the staff recommendation. The reason we wanted to come to you was to express that we think the process needs more work. About 60 percent of our work is design-build or negotiated work. The process MDT is using is much less open than the other jobs we bid on. I don't think that you are getting the best project for the dollar because the process is too closed. You never interview the firms. I've never seen it done that way before; you should get to make a presentation and discuss and explain your proposal in detail. We would encourage you to continue using the design-build process.

Chairman Kennedy requested that Dick Anderson submit his suggested changes to the commission in writing.

Director Lynch said legislation is underway to streamline the design-build advisory committee (Senate Bill 56). Their function is to review such suggestions as have been set forth by Dick Anderson.

Commissioner Kottel asked for clarification as to the reasons DAC was considered non-responsive. Was it the failure to designate how they would provide two-lane, two-way traffic across the bridge during hours of darkness? McArthur said yes. Commissioner Kottel asked if that made them non-responsive, why did the committee ask them how they would take care of that? If they could answer it without increasing the price, they would have been considered responsive? McArthur said he believed so, although he was not a member of the selection committee. Commissioner Kottel asked how much the stipend on the project was. McArthur said the stipend was \$8,000.

Commissioner Howlett suggested that some of these issues be incorporated into the guidelines prior to the third project being .

McArthur said the design-build advisory committee elected not to require a presentation because of the relatively small size of the projects, and because of the time, effort and money involved in putting such a presentation together.

Chairman Kennedy said Yellowstone County requires firms to make a presentation for much smaller design-build projects. He expressed concern that we do not go through this very important part of the process.

Currie clarified that the guidelines we are operating under were developed by the design-build advisory committee. That team was made up from representatives from the MCA, the Consulting Engineers' Council, MDT, FHWA and at least one contractor and one

consultant firm. We cannot change those without consulting with them. Mac is following the guidelines that the collaborative group came up with.

McArthur noted that we must also meet FHWA requirements, and that FHWA still treats design-build as an experimental process because it is comparatively new to highway construction. Duman said the design-build process is an attempt to marry the competitive bidding process (which has been used in the highway program for over 100 years) with the qualification/negotiation process used in engineering/consulting work. This explains the use of an adjusted score yielded by dividing the bid price proposal amount by the technical evaluation.

Bob Ganter of Kadrmas, Lee and Jackson said the structure that's been put together is rigid, but it is fair. He confirmed his team is ready to get to work as soon as the commission authorizes the project.

Hegreberg identified himself as a member of the design-build advisory council since its inception. The legislation that enabled this pilot program has a sunset clause. The purpose for the pilot projects is to test the process and refine it. He encouraged folks to review Senate Bill 342 going through the legislature, authorizing counties to use the design-build process. That bill affects all state agencies except MDT.

Bill Tamietti of Tamietti Construction said he agreed with many of Dick Anderson's comments. His main point to the commission was that the request for proposal was quite specific in several areas, such as the requirement for traffic control during the nighttime hours.

Commissioner Kottel asked if the commission had authority to award the stipend to the design-build teams that were short-listed but considered non-responsive. Reardon confirmed to the commission that design-build contracts fall under their jurisdiction.

Wissinger said he had intended to ask the commission if MDT could purchase the proposals from the two short-listed bidders because their proposals, even though considered non-responsive, contain valuable information and could be useful as training tools in the pilot project process.

Commissioner Howlett moved to accept staff recommendations to award the project to the design-build team of Construction Solutions, Inc./Kadrmas Lee & Jackson/Tamietti Construction/SK Geotechnical and authorize the department to negotiate the purchase of the plans from the other two short-listed bidders; Commissioner Griffith seconded the motion.

Commissioner Espy expressed a desire to vote on the issues separately.

Commissioner Howlett amended his motion to award the contract to the design-build team of Construction Solutions, Inc./Kadrmas Lee & Jackson/Tamietti Construction/SK Geotechnical; Commissioner Griffith seconded. All five commissioners voted aye.

Commissioner Howlett moved to adopt the director's recommendation to negotiate with the other two short-listed bidders for the acquisition of their plans; Commissioner Griffith seconded. All five commissioners voted aye.

=> Chairman Kennedy requested a work session on design-build at the next commission meeting.

Agenda item 14: Commission discussion

Tribal committee update

Currie said the intent was to put a forum together for visiting with tribal councils around the state and listen to issues they may have with the Montana Department of Transportation and

see how we might improve relationships. The original intent was to accomplish this rather quickly but it was simply not feasible.

Commissioner Espy noted the first meeting with the Confederated Salish and Kootenai Tribes (CSKT) was very successful.

Commissioner Howlett said he moved to create that subcommittee because we'd been through a stormy session related to a project on the Northern Cheyenne Reservation [August 11, 2004 meeting in Baker]. It involved interpretation of the federal laws applying to the transfer of monies to the Bureau of Indian Affairs. The issue of competitive bidding was raised. We started to look at what the other issues might be – we have heard, for example, that it costs more money to do a project on a reservation. My experience, having sat on the tribal council, was that the department hadn't reached out to us; we were expected to come to the department. We need to go and listen to what the concerns are. There is a terrible carnage of death on the highways on Indian reservations. There are many reasons for this, one of which is with the accident data itself. That data may not always be reported, thereby not elevating the roads to the point of eligibility for funding. There are several safety issues that need to be looked at, such as bicycle/pedestrian facilities and lighting. There seems to be a lack of understanding between the two entities. I think it's important that we try to come to an understanding.

We tout the highway bill as a jobs bill, and the reservations have a high rate of unemployment. What can we do in terms of internship programs, for example? Let's include everyone: the department, the tribes, the Montana Contractors' Association.

We have millions of dollars worth of projects planned for the reservations in upcoming years. What do we understand about how the tribes' governments work? Some have access to very technically sophisticated staff, and some don't. Each and every one is different and that is the premise upon which I made the motion to create this committee. The tribal leaders that I've spoken to are generally excited about it. We have a timeline of July 1 to get to every reservation. We have a lot to learn, and so do the tribal governments.

Lynch said he has been with the new tribal liaison to several meetings with tribal members. One thing that continues to come up is the issue of lack of understanding of cultural matters. We need to look outside of the box that we've been looking through for the last 50 years. We need to understand.

In response to a question from Chairman Kennedy about the quorum issue, and if that applies to the commissioners when they meet with tribal leaders, Reardon advised them to advertise the meeting.

Lynch said 47 percent of the fatalities in the state are alcohol-related. Eighteen percent of those are Native American. Given that Indians are six percent of the state's population, that statistic is alarming. Also, I'm curious as to why, of 22 registered DBE firms, only two are active. Are we doing something wrong? This committee will hopefully yield some answers to these types of questions.

Commissioner Howlett said he supports the idea of the entire commission attending these meetings. It shows more respect for the tribal governments.

=> Straehl will send notebooks containing information about the tribes to the new commissioners.

Lynch said the Governor's office also is doing similar work and will, by our next meeting, come to the commission with a report. We want to prevent going in different directions and not duplicate effort. I will also look at cultural awareness training for MDT and contracting employees.

Jan Brown expressed FHWA support for this work. She and other FHWA representatives attended the first meeting with the CSKT and learned a lot. From their perspective, FHWA has a dual role to both the Indian nations and the state of Montana, and will seek flexibilities

within the federal laws and regulations to try some new approaches. Craig Genzlinger is our liaison and we will continue to attend these meetings with you. He has access to nationwide resources.

⇒ Chairman Kennedy said at the next commission meeting we will have a discussion on this, along with a report from Mr. Lynch, and will discuss some timelines for continuing the work.

Agenda item 15: Opportunity for public comment

Chairman Kennedy offered the opportunity for the public to address the commission. In addition, Chairman Kennedy offered opportunity for public comment throughout the meeting after each motion.

Agenda item 16: Conference call schedule for 2005

The next conference call is scheduled for March 7 at 10am.

Agenda item 17: Schedule upcoming meetings

Chairman Kennedy said we are aiming to meet approximately every six weeks, for a total of ten meetings per year. At each meeting, we will convene for two days, to provide time for a commission meeting and a tour of area roads. Chairman Kennedy would like to plan out meetings for the rest of the year, and will solicit input on the dates. Wednesdays and Thursdays seem to be best. Commissioner Espy said we need to work around staff's work travel requirements. Chairman Kennedy said we will try and get something together by the March 7 conference call.

The next meeting will need to be in Helena because the Legislature will still be in session.

The meeting adjourned at 4:45pm.

Bill Kennedy, Chairman
Montana Transportation Commission

Jim Lynch, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission